

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

PATTI'S PITAS, LLC, QUEEN CITY TOURS,
MARK A. BABBITT, DDS, INC., IDEAL
SALES, INC., LYTLE CAFÉ, and INDIAN TREE
CHIROPRACTIC, P.C., individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO MERCHANT SERVICES, LLC,

Defendant.

CIVIL ACTION NO.

1:17-cv-04583 (AKT)

**PLAINTIFFS' NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR
PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT AND FOR
DIRECTION OF CLASS
NOTICE**

PLEASE TAKE NOTICE that Plaintiffs Patti's Pitas, LLC, Queen City Tours, Mark A. Babbitt, DDS, Inc., Ideal Sales, Inc., Lytle Café, and Indian Tree Chiropractic, P.C. (collectively, "Plaintiffs") will and hereby do move the Court, before the Honorable A. Kathleen Tomlinson, U.S.M.J., at the United States District Courthouse for the Eastern District of New York, located at 100 Federal Plaza, Central Islip, New York 11722, at a date and time to be determined by the Court, for an order pursuant to Fed. R. Civ. P. 23(e)(1) granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and for Direction of Class Notice.

Plaintiffs request that in this order the Court do the following:

- a. Grant preliminary approval of the parties' proposed Settlement Agreement and Release ("Settlement")¹;
- b. Certify, for settlement purposes, the Settlement Class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3);

¹ The Settlement is being filed herewith as Exhibit A to the accompanying Joint Declaration of E. Adam Webb and Roger N. Heller ("Joint Decl."). All capitalized terms have the meanings afforded them in the Settlement.

- c. Appoint Plaintiffs as Class Representatives representing the Settlement Class;
- d. Appoint Webb, Klase & Lemond, LLC (E. Adam Webb and Matthew C. Klase) and Lieff Cabraser Heimann & Bernstein, LLP (Roger N. Heller and Avery S. Halfon) as Class Counsel for the Settlement Class;
- e. Approve the Parties' proposed Notice Program, including the proposed forms of notice, and direct that notice be disseminated pursuant to such Notice Program and Fed. R. Civ. P. 23(e)(1);
- f. Appoint Rust Consulting, Inc. ("Rust") as Settlement Administrator and direct Rust to carry out the duties and responsibilities of the Settlement Administrator specified in the Settlement;
- g. Set deadlines for Settlement Class Members to request exclusion from the Settlement Class and to object to the Settlement, and for Settlement Class Members that are Former Customers to submit claims for settlement payments;
- h. Stay all non-Settlement-related proceedings in this lawsuit pending final approval of the Settlement; and
- i. Schedule a Final Approval Hearing and certain other dates in connection with the final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e)(2).

This motion is based on this notice of motion and motion, the accompanying memorandum, the Settlement including all exhibits thereto, the Joint Declaration of E. Adam Webb and Roger N. Heller filed herewith, the Declaration of Hunter Hughes filed herewith, the argument of counsel, all papers and records on file in this matter, and such other matters as the Court may consider.

As discussed in the accompanying memorandum, the requested relief is appropriate because the Settlement satisfies the standards for preliminary approval and for direction of class notice under Fed. R. Civ. P. 23(e)(1).

For the Court's convenience a proposed order approved by the parties is filed herewith.

DATED this 12th of January, 2021 Respectfully submitted,

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BY: /s/ E. Adam Webb

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2021, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system which automatically sends email notification of such filing to all attorneys of record.

/s/ E. Adam Webb

E. Adam Webb